

**Minutes of the
Tobacco Education and Research Oversight Committee (TEROC)**

Meeting on May 24, 2005
California Department of Health Services
Auditorium (First Floor)
1500 Capitol Avenue
Sacramento, CA 95814

MEMBERS PRESENT:

Bruce Allen, Lourdes Baézconde-Garbanati, Stella Aguinaga Bialous, Theresa Boschert, Alan Henderson, Susanne Hildebrand-Zanki, Rod Lew, Deborah Sanchez, and Traci Verardo

MEMBERS ABSENT:

Ron Arias, Gregory Franklin, Kirk Kleinschmidt, and Dorothy Rice

OTHERS IN ATTENDANCE:

Josh Alpert, Americans for Non-Smokers Rights
Dileep G. Bal, M.D., Chief, Cancer Control Branch, Department of Health Services (DHS)
Kimberly Bankston-Lee, African American Tobacco Education Network
Francisco Buchting, Tobacco Related Disease Research Program (TRDRP), University of California (UC)
David Cowling, Chief, Data Analysis and Evaluation Unit (DAEU), Tobacco Control Section (TCS), DHS
Charles DiSogra, Director, TRDRP, UC
Edgar Ednacot, Asian Pacific Islander American Health Forum (APIAHF)
Kimberlee Homer, California Youth Advocacy Network
Kathony Jerauld, DAEU, TCS, DHS
Dorothy Johnson, American Heart Association
Dian Kiser, Bar and Restaurant Employees Against Tobacco Hazards, American Lung Association (ALA) of the East Bay
Paul Knepprath, ALA of California
John Lagomarsino, Safe and Healthy Kids Program Office (SHKPO), California Department of Education (CDE)
Carolyn Martin, Sacramento Lung Association, Resources and Education Supporting People Everywhere Controlling Tobacco
Sharen Muraoka, American Cancer Society
Greg Oliva, Chief, Program Planning and Policy Development, TCS, DHS
Cathy Palmer, Chief, Administrative and Contract Support Unit, TCS, DHS
Kevin Reilly, Deputy Director, Prevention Services, DHS
Rhonda Robins, Consultant to TCS/DHS
April Roeseler, Chief, LPU, DAEU, TCS, DHS
Bill Ruppert, TCS, DHS

Robin Shimizu, Assistant Chief, TCS, DHS
Sandra Soria, TCS, DHS
Colleen Stevens, Chief, Media Unit, TCS, DHS
Kimberly Weich Reusché, ALA, Center for Tobacco Policy and Organizing
Gregory Wolfe, SHKPO, CDE

1. WELCOME, INTRODUCTIONS, AND OPENING COMMENTS

Alan Henderson substituted as Chairperson for the meeting and called the meeting to order at 10:10 a.m. Each of the Committee members introduced themselves. Members of the audience also introduced themselves and identified their affiliations.

2. APPROVAL OF MINUTES, REVIEW OF CORRESPONDENCE, AND ANNOUNCEMENTS

The minutes for the January 24, 2005, regular Tobacco Educational Research Oversight Committee (TEROC) meeting were approved with one correction. The minutes for the April 11, 2005, TEROc meeting on the Master Plan (MP) were approved as written.

3. ENVIRONMENTAL DEVELOPMENTS

The Chairperson informed the Committee that final testimony is being presented in the federal lawsuit against the tobacco industry under the Racketeer Influenced and Corrupt Organization (RICO) Act, and it should be coming to a judicial conclusion soon. This federal lawsuit has been going on for approximately five years.

4. LEGISLATIVE UPDATE

Ms. Sharen Muraoka, American Cancer Society (ACS), and Mr. Greg Oliva, Department of Health Services (DHS), presented information regarding tobacco related legislative bills currently working their way through the Legislature.

Senate Bill (SB) 576 Ortiz, which is co-sponsored by ACS, would require all health plans and health insurers to include coverage for comprehensive cessation services including personal counseling, physician cessation interventions, and prescriptions. It would be paid for by health plan members and would have a co-payment. The California Health Benefits Review Program and the California Public Employees Retirement System (CalPERS) legislative unit both have found the bill to be cost neutral. Currently it is in the Senate Appropriations Committee suspense file.

SB 400 Kuehl, cleans up the tobacco licensing provisions of Assembly Bill (AB) 71 (California Cigarette and Tobacco Products Licensing Act of 2003) by creating a stronger and graduated set of penalties and eliminating the 13 percent youth sales rate trigger requirement and the requirement for DHS to provide training after the first violation. It would make no change to the licensing fee. It is to be heard in the Senate Appropriations Committee on May 26, 2005. The voluntary health agencies support this bill.

AB 1612 Pavley, a cigarette litter bill, would enact the Cigarette Pollution and Litter Prevention Act of 2005, by assessing ten cents per pack fee on manufacturers of cigarettes sold in California. The projected \$112 million in revenue would be used for tobacco use prevention, cessation, and the clean-up of tobacco related pollution and litter. It is to be heard in the Assembly Appropriations Committee on May 25, 2005. The voluntary health agencies support this bill.

SB 942 Chesbro, is essentially the same as AB 1612 and is scheduled to be heard in the Senate Appropriations Committee today.

AB 178 Koretz, would implement regulations similar to those in New York State establishing fire safety cigarette standards. It is to be heard in the Assembly Appropriations Committee on May 26, 2005.

AB 616 Vargas, would prohibit a public employee or member of the public from smoking any tobacco product in an outdoor area enclosed on four sides by a state public building or buildings, with the exception of University of California (UC) and California State campuses. It is awaiting vote on the Assembly floor.

SB 564 Torlakson, would create the California Healthy Children Trust Fund and raise the cigarette tax by \$1 per pack. It would provide funding for a number of programs and activities, primarily preventive health programs for children, but also an augmentation for the tobacco control program. It would provide for backfill to Proposition (Prop) 99, the Breast Cancer Fund, and Prop 10. It is awaiting vote in the Senate Revenue and Taxation Committee.

5. BUDGET UPDATE – DEPARTMENT OF FINANCE

The Chairperson announced that since the Department of Finance (DOF) was unable to send a representative to speak on the budget, Ms. Robin Shimizu, Tobacco Control Section (TCS) would provide the Committee with an update.

Ms. Shimizu provided handouts with budget narrative and spreadsheets concerning the Governor's May Revision of the fiscal year 2005-06 proposed budget (see enclosed), and stated the full budget is on the DOF website, www.dof.ca.gov.

Ms. Shimizu explained that the May Revise includes an additional \$12-17 million in overall Prop 99 funds, including some one-time-only funds that appear to come from a reduction in tax evasion for other tobacco products. There are no changes in the allocations for California Department of Education (CDE) or Tobacco Related Disease Research Program (TRDRP) from the January Budget to the May Revise. TCS is proposed to receive additional funding from the Prop 99 Unallocated Account (UA): \$1.0 million for the media campaign and approximately \$3.0 million for Competitive Grants. The DHS Asthma Program is proposed to receive \$4 million one-time-only from the UA.

Ms. Shimizu explained that DOF makes decisions for the proposed Prop 99 expenditure plan based on input from the Legislature and constituent groups. Among the proposed changes to Prop 99 is allowing the hospital, physicians, and UAs to draw down federal matching funds. Currently, Prop 99 does not allow the funds in the hospital and physicians accounts to be used for match or direct medical care.

Budget related comments from TEROC members and from the audience include:

- Prop 99 language only prohibits using the hospital and physicians accounts to draw down matching funds and is silent regarding the other accounts. Prop 99 does not allow the tobacco surtax funds to be used to supplement programs, and raises the question of whether using the funds to draw down federal funds for medical care is supplemental.
- The Assembly voted to adopt the May Revise language. The Senate met on May 20, 2005, and adopted most of the May Revise language but rejected the \$1 million UA proposed for the media campaign and reduced the Asthma funding from \$4 million to \$3 million. Differences will have to be worked out in Conference Committee and the budget trailer bill will need a four-fifths vote to amend Prop 99. The Senate is not recommending changes to the Health Education (HEA) and Research (RA) Accounts; however, language is still being written.
- The Legislative Analyst Office also has raised these possible changes to Prop 99 as budget solutions.
- Some constituencies believe this move by DOF could be a slippery slope to potential raids on the HEA and RA if those funds are used to draw down federal matching funds.
- The court has recognized the intent of Prop 99 in previous raids on the funds. The May 1992 lawsuit retrieved diverted funds back in 1996. However, allowing Prop 99 funds to be used for federal match could undermine the lawsuit decision. Language may be approved that would limit or restrict the UA to be used only for those programs that can receive a federal match.
- These are dangerous times for tobacco control. Funds have already been reduced drastically for prevention and research. These actions by DOF and the Legislature should be considered a serious threat to the HEA, RA, and UA.

Kevin Reilly, D.V.M., M.P.V.M., Deputy Director, Prevention Services, DHS, emphasized to the Committee that DHS is not looking to make any changes to the HEA or RA, that DHS is supportive of health education and research, and that the May Revise included money for TCS from the UA.

The Chairman stated that historically there have been no funds allocated from the UA to help out in reductions to the HEA programs or research, which is the intent of the UA.

A TEROC member asked if the voluntary health agencies have any recommendations for TEROC action. A spokesperson for the voluntary health

agencies said TEROC could send a letter to DOF expressing concern that action to amend Prop 99 could open up a slippery slope, that it is very important to preserve the integrity of Prop 99, particularly the HEA, RA, and UA, and that the UA should be used to support the HEA and RA. A motion was made, seconded, and approved unanimously to send the letter and to work with the voluntary health agencies to prepare the letter.

6. PROGRAM REPORTS BY THE AGENCIES

(Each agency sends a written report to TEROC prior to the meeting and responds to questions at the meeting.)

a) University of California, Tobacco Related Disease Research Program Report

In July, TRDRP will announce the awards from the 196 applications received for the 14th cycle of tobacco related research grants and provide specific information at the next TEROC meeting. The previous cycle funded 23-24 percent of the applications received and it will be about the same for this cycle. The percent differs by study section, and the mix of applications for different study sections varies from year to year. However, TRDRP is encouraged by the increase in applications and the quality of applications.

The amount for these awards is approximately \$15 million and is expected to drop to \$12 million for the 15th cycle in 2006. Since last September the Scientific Advisory Committee (SAC) has been meeting to discuss the grant mechanisms and funding priorities given decreasing funds. The SAC recommended that TRDRP maintain the existing primary research areas and continue requesting applications in the full spectrum of funding mechanisms. The SAC is open to some adjustments beyond the 2006 cycle. TRDRP will have an Internet-based, electronic application, and review mechanism for the 15th grant cycle.

The Committee members asked for clarification and responses:

- *Will TRDRP announce the number of awards that address priority populations?* Yes, at the next meeting.
- *Can TRDRP do some capacity building with investigators to help them to become more capable of receiving a funding grant?* TRDRP works hard to encourage investigators to apply. If there are gaps in specific scientific areas, TRDRP will encourage scientists active in those areas to submit applications. Also TRDRP encourages scientists who are funded to bring new researchers into their study to mentor them and to build capacity, and TRDRP will supplement the grant to cover the individual for a period of time. However, there are more post-doctoral opportunities in some scientific areas than in others. Policy and economics tracks do not have post-doctoral tracks but TRDRP is trying to work on a way to assist these investigators.
- *Are paylines stratified by research areas?* The payline is not across the board; and is interpreted relative to the individual research area and the particular research proposals submitted. There is flexibility.

- *Prevention, Cessation, and Tobacco-Related Health Disparities are grouped in one research category, which puts them at a disadvantage relative to the pay line. Can these three be broken into three separate research areas giving them the emphasis and importance they deserve, and thus encourage more applications and awards in these areas?* TRDRP cannot re-construct the seven priority areas at this time, but it can promote priority area number five, which includes these three areas of interest. TRDRP will present at the next meeting how the dollars are allocated.
- *Will that delineation include both awards as well as applications?* Yes.
- *Will TRDRP show how the awards for the past four years fit into the MP?* That can be done for the current cycle, and possibly for the four-year period.

TRDRP provided information on their Investigators Conference scheduled for October 10-11, 2005, at the Westin Bonaventure Hotel in Downtown Los Angeles. They presented slides on who should attend, the schedule, and the conference highlights. The theme will be "15 Years of Progress in the Fight Against Tobacco." They explained how the Tobacco Research Translation Institute would be integrated into the conference, with a focus on reproductive health effects and Secondhand Smoke exposure. The call for abstracts went out today, and registration begins now.

b) California Department of Health Services, Tobacco Control Section Report

TCS reported that:

- Three procurements were released: 1) the statewide Secondhand Smoke and Youth/Young Adult Training, Technical Assistance, and Advocacy (\$3 million); 2) Local Tobacco Control Interventions (approximately \$7 million); and 3) Addressing Priority Populations in Tobacco Control (approximately \$7 million).
- Almost 300 people attended the April 2005 Project Directors' Meeting.
- WestEd will now conduct the evaluation of the in-school Tobacco Use Prevention Education (TUPE) program.
- Reports of the five epidemiological studies of specific priority populations in the state will likely be released in early Fall. A summit to share the findings of these studies is scheduled for September 7-8, 2005.
- The adult smoking prevalence rate from the 2004 California Adult Tobacco Survey is 15.4 percent, which is a historic low since the smoking definition was changed in 1996. The smoking prevalence among 18- to 24-year-olds dropped to 18.3 percent, after several years of prevalence over 20 percent. (The drop is not statistically significant due to sample size.)

The Media Campaign Unit reported:

- Upcoming new general market advertisements (ad) include: "Bubbles II" dealing with issues such as outdoor worksites and multi-unit housing, "Training" dealing with quitting smoking and promoting the Helpline and "Recipe" dealing with the tobacco industry manipulation of ingredients in cigarettes. These should be ready for placement in the fall.

- There are three finalists for a new ad agency. Since the highest prevalence rate is among the low socio-economic status population, an important part of the review process is assessing how the different ad agencies would address this problem.
- In April 2003, the R. J. Reynolds Tobacco Company sued DHS over the media campaign, stating its First Amendment rights had been violated. The ninth Circuit Court ruled, in favor of DHS, that there was no violation of the tobacco company's First Amendment rights.

Committee members asked:

- *Can TCS start buys for the new media ads to get them on the air sooner?* TCS cannot make any new buys until a new ad agency is selected, hopefully by July 1, 2005.
- *Is the approval process going smoothly without delays?* The Secretary of California Health and Human Services, Kimberly Belshé, had approved the earlier concepts of these ads, and a more definitive answer to that question should be available at the next meeting.
- *How many of the 44 applications for the Local Tobacco Control Interventions Request for Application (RFA) are being funded?* Additional funds allowed all 26 applications with passing scores to be funded, excluding those that were a second application from the same agency.
- *The City of Long Beach tobacco control coalition is trying to initiate a licensing program. They conducted an attempt-to-buy survey and found a 36 percent successful buy. How does this compare with anything else going on in the state?* Approximately 22 local lead agencies (LLAs) are working on local retail licensing ordinances, and SB 400 by Senator Kuehl greatly strengthens the STAKE Act and Penal Code 308(a) and increases the penalties for selling to minors.
- *Is there youth purchase data available for cities, for example for the 88 cities in Los Angeles County?* The state does not have that specific data. Some cities have conducted their own youth purchase surveys and they would have that data for their area.
- *Are there any problems in filling the staff vacancies?* TCS is having trouble getting people on the employment lists to interview for the vacancies. Therefore, the workload is a major problem and staff are having to work long hours to complete their work.

c) California Department of Education, Safe and Healthy Kids Program Office Report

Based on an article in the April 2005 *Journal of Adolescent Health*, much of the research evaluating the long-term effectiveness of the school-based prevention programs is very old, and CDE states that it should not be used to judge current school-based tobacco use prevention programs. California schools have different local needs assessment requirements and curriculum needs for their unique student populations than may be formally evaluated elsewhere in the country.

As a follow-up to agreements from the March collaboration meeting with TCS, CDE is reminding school districts that they must participate in the California Student Tobacco Survey, if requested to do so. Per the Attorney General's opinion, TUPE funds will be withheld if districts do not participate. Since tracking participation in the survey, and starting to withhold funding, CDE has found that some schools are choosing to give up the funding rather than have the survey. Also, all county offices of Education must re-certify school districts as having tobacco-free policies and enforcement procedures as outlined in the Health and Safety Code because the last certification took place ten years ago.

CDE passed out materials on the recent TUPE Grades 6-8 Competitive Grant Awards and Grades 9-12 Competitive Grant Awards (see enclosed). Members asked about appeals and why some counties were not on the list. CDE said that there were four appeals filed and these will be reviewed on whether CDE followed the correct processes, and that some counties do not apply for funds. Also, there are other competitive grant cycles and the counties missing on these lists may still be receiving other competitive grant funding.

A Committee member commented that some tobacco control LLAs have been trying to improve coordination with the local TUPE coordinators and have had difficulties. There was a discussion of what CDE is doing to implement objective 3 of the MP (eliminating disparities), and a member asked if CDE has any specific plans at this time. CDE responded that programs are barely doing base programs within the limited funding, that CDE is encouraging districts and schools to address disparities among populations, that CDE provides the necessary data to local educational agencies (LEAs) but it is up to each LEA to select their area of emphasis, and that CDE may consider revising the current grades 9-12 grant to address disparities.

A member asked whether CDE would support trailer bill language to prohibit schools from taking tobacco industry funds if they receive TUPE funds. They responded that they think so, but added that they have no firm data on which schools take tobacco industry funds. They mentioned that one school was approached by the Pat McCormick Foundation and CDE told the school they would lose their TUPE grant if they took the money. It was moved, seconded, and approved to send a letter to CDE and a copy to the California School Boards Association that any district receiving tobacco prevention funds should not take tobacco industry funds and any district with tobacco-free policies should not take tobacco industry funds.

Flowing from a discussion of CDE's written report under objective 7 of the MP (other activities), it was agreed to include a recommendation in the next MP that CDE adopt the proposed changes to the TUPE program that would eliminate all entitlement funding.

7. CESSATION POLICY

The Chairman stated that the first order of business in this agenda item is to address the motion that was still on the table from the previous meeting.

At the regular TEROC meeting held on January 24, 2005, it was moved and seconded to adopt the recommendations on cessation in Ms. Verardo's memorandum (memo) dated July 15, 2004, pages 2 and 3, but exclude the bullets that lift the funding restrictions. This was followed by another motion and a second to table or defer the discussion on the first motion to the next MP meeting; however, no action was taken on the cessation motion because there was not a quorum at the April 11, 2005 MP meeting.

The members discussed what the intent of the cessation recommendations are: direct inclusion into the new MP, a policy memo to be sent to agencies, or simply the adoption of TEROC policy. There appeared to be a consensus that the motion was to adopt TEROC policy, and this policy can then be used as part of TEROC's considerations for changes to the MP, and for recommendations to the agencies over which TEROC has oversight.

The point was stressed that the goal is to increase collaboration and advocacy for expansion of cessation services and the availability of these services and to make cessation an integral part of all public and private benefit packages. There was a comment from the floor that the language in the memo would give the LLAs a push to work with health care providers and insurers to provide cessation services. A "friendly" amendment to the motion was suggested and accepted to request TCS to clarify to LLAs that the ten percent cap applies only to the provision of direct cessation services. It was discussed and agreed to send the TEROC cessation policy document, if adopted, to the agencies.

After clarifications from several members that the motion was: to adopt TEROC policy to be used as advice to the agencies and for consideration in developing the MP, to adopt the recommendations concerning cessation in the July 15, 2004, Verardo memo and eliminating the bullets that eliminate funding restrictions, and to request that TCS clarify to LLAs the limits on cessation funding restrictions, the Chairman called for the vote on the motion. The motion was passed six to one.

8. MASTER PLAN DEVELOPMENT

The members who had been at the April 11, 2005 MP meeting reviewed some of the issues discussed at the meeting:

- Reduced smoking prevalence would remain the goal.
- The objectives would remain the same with an emphasis on an increase in the tobacco tax.
- In general the strategies are still valid and relevant but some need to be updated and clarified.

- There would be more visual information such as graphs to demonstrate progress that has been made.

Committee members made additional comments:

- The MP should be self-contained and not refer back to the previous one.
- It is important to get input from the community and from the agencies directly affected by the recommendations.
- The MP needs to justify the objectives, back them up with data and rationale, and link to the tax.
- It should explain what has been accomplished around the strategies and why they are still relevant.
- We must look at the cost of achieving the strategies.
- We should consider separate prevalence goals for high school and middle school.

Ms. Rhonda Robins, the writer for TERO's 2006-08 MP, reviewed suggested MP changes related to the wording and order of the objectives (see enclosed).

- 1) Prevalence goals: There was a lengthy discussion regarding the overall prevalence rate goals for adults and youth, and extending the current prevalence goal to the year 2008. There was a consensus to review the data more thoroughly before setting a prevalence goal for adults and youth. It was clarified that the previous goal of 2 percent prevalence for youth was based on data from telephone surveys, and now the state is using data from in-school surveys, which indicate a prevalence of 12 percent for high schools and 4 percent for middle schools. TCS was asked to provide additional data on prevalence, possible prevalence goals and price elasticity related to tax increases.
- 2) Change the name of the "objectives" to "Areas of Focus" – There appeared to be a consensus to retain the name "objective."
- 3) There was agreement on moving the tobacco tax objective to become objective number 1, and the need to explain why it is so important in achieving the goal of the reduction in tobacco use. Members said it should be made clear that an increase in tobacco tax is needed in order to increase the capacity of the program to reduce prevalence, which is the primary goal.
- 4) There was agreement to change the tobacco tax objective to read "Increase the tobacco excise tax."
- 5) There was agreement to change the old objective number 1 to read "Strengthen California's comprehensive tobacco control program."
- 6) There was agreement to retain the old objective number 3 wording to read "Eliminate disparities and achieve parity in all aspects of tobacco control."

- 7) There was agreement to change the wording of old objective number 6 to read "Restrict and regulate the activities and influence of the tobacco industry."
- 8) There was agreement to retain "Federal Drug Administration" (FDA) in the objective number 6 strategy.

The members discussed the continuing MP development process and agreed to work via electronic mail and face-to-face meetings. The timetable is for a draft of the MP by August, a final draft by November, and release of the MP in January 2006. They agreed to meet sometime between July 11 and 22, 2005, on the MP and perhaps schedule a regular meeting for December. They said the regular TEROC meeting for September 15, 2005, would be devoted in part to the MP.

9. PUBLIC QUESTIONS AND COMMENTS

There were no questions or comments from the public.

NEXT MEETING DATES:

July, 2005 (date to be determined), 10 a.m. to 5 p.m., Sacramento, MP Meeting
September 15, 2005, 10 a.m. to 5 p.m., Sacramento, Regular Meeting
December, 2005 (date to be determined), 10 a.m. to 5 p.m., Sacramento, Regular Meeting

The meeting was adjourned at 4:15 p.m.

ACTION ITEMS:

1. TEROC to send a letter to DOF expressing concern that action to amend Prop 99 could open a slippery slope, that it is very important to preserve the integrity of the Health Education, Research, and UA's, and that the UA should be used to support the HEA and the RA.
2. TEROC to send a letter to CDE, with a copy to the California School Boards Association, that any school district receiving tobacco prevention funds should not take tobacco industry funds, and any school district with tobacco-free policies should not take tobacco industry funds.
3. TEROC to include a recommendation in the MP that CDE adopt the proposed changes to the TUPE program, that is, to drop entitlement funding, and have only competitive grants.
4. TCS to provide TEROC additional tobacco use prevalence information, possible MP prevalence goals, and price elasticity information related to tax increases.
5. TRDRP to present at the next TEROC meeting: a) the numbers and percentages of awards in the 14th cycle that address priority populations, b) information on how the dollars are allocated overall, and c) how the awards for the past four years fit into the MP.
6. TEROC to send its policy document on cessation to TCS, Safe and Healthy Kids Program Office (SHKPO), and TRDRP.

ENCLOSURES

1. Copy of the TCS handouts on the May Revise of the state budget for fiscal year 2005-06.
2. Copy of the CDE listing of the recipients of the TUPE Competitive Grant Awards for grades 6-8 and grades 9-12 for grant term June 29, 2005 to June 28, 2008.
3. Rhonda Robins' May 17, 2005 memo.